

1 **I. INTRODUCTION**

2 The Complaint in MUR 7223 alleges that Applegate for Congress and Jennifer May in
3 her official capacity as treasurer ("AFC") and Douglas Applegate, a federal candidate and AFC's
4 original treasurer, knowingly misreported disbursement and cash-on-hand figures in disclosure
5 reports filed with the Commission.¹ Shortly after the Complaint was filed, AFC amended its
6 2016 pre- and post-general election reports to disclose an additional \$373,530 in disbursements.
7 Consequently, the Reports Analysis Division ("RAD") referred AFC to the Office of the General
8 Counsel ("OGC").²

9 AFC and Applegate acknowledge filing erroneous disclosure reports but assign
10 responsibility for the errors to their hired consultant, and assert that they remedied the problem
11 by hiring a new consultant, filing amended disclosure reports, and adopting stronger compliance
12 policies. Based on the available record, we recommend that the Commission open a matter
13 under review ("MUR") in RAD Referral 17L-23, merge that matter with MUR 7223, find reason
14 to believe that AFC violated 52 U.S.C. § 30104(b), enter into pre-probable cause conciliation
15 with AFC, and approve the attached conciliation agreement. However, because there is an
16 insufficient factual basis to infer that Applegate knowingly or recklessly filed false disclosure
17 reports, the Commission should find no reason to believe that Applegate personally violated the
18 law as alleged.

19 **II. BACKGROUND**

20 Douglas Applegate was a candidate for California's 49th Congressional District during
21 the 2016 election cycle. Applegate for Congress, his principal campaign committee, registered

¹ Compl. at 1-2 (Mar. 13, 2017).

² See RAD Referral 17L-23 (Aug. 4, 2017) ("Referral"), incorporated herein by reference.

1 with the Commission on July 20, 2015, and Applegate served as its treasurer until December 28,
2 2016, when Jennifer May was appointed treasurer.³ AFC filed its 2016 12-Day Pre-General
3 Election Report on October 27, 2016, reporting total disbursements of \$350,241.⁴ AFC filed its
4 2016 30-Day Post-General Election Report on December 8, 2016, reporting total disbursements
5 of \$660,628 and an ending cash-on-hand balance of \$434,104.⁵ However, in its next report, the
6 2016 Year-End Report, AFC disclosed a beginning cash-on-hand balance of only \$57,696.⁶ This
7 discrepancy prompted RAD to send AFC a Request for Additional Information (“RFAI”) on
8 March 9, 2017.⁷ The Complaint in this matter was filed on March 13, 2017.

9 The Complaint alleges that AFC and Applegate knowingly filed false disclosure reports
10 and failed to respond to Commission RFAIs seeking to correct the public record.⁸ The
11 Complaint alleges that these errors were made knowingly — thereby subjecting Applegate to
12 personal liability as AFC’s treasurer — because “Applegate cannot credibly claim that he was
13 not aware that the reports he was filing contained wrong and misleading information[.]”⁹

14 Respondents acknowledge making erroneous disclosures, but claim that Crummitt &
15 Associates (“Crummitt”), the consulting firm that AFC hired to handle its accounting and

³ Applegate was AFC’s treasurer at the time it filed the two disclosure reports at issue in this matter. See AFC Statement of Org. (July 20, 2015); AFC Amended Statement of Org. (Dec. 28, 2016). May served as treasurer from December 28, 2016, until May 30, 2017, when AFC named Jane Leiderman treasurer. See AFC Amended Statement of Org. (May 30, 2017).

⁴ AFC 2016 12-Day Pre-General Election Rpt. at 2 (Oct. 27, 2016).

⁵ AFC 2016 30-Day Post-General Election Rpt. at 2, 5 (Dec. 8, 2016).

⁶ AFC 2016 Year-End Rpt. at 4 (Jan. 31, 2017).

⁷ Although RAD sent AFC RFAIs relating to its prior disclosure reports, those inquiries were not germane to the issues raised in this matter.

⁸ Compl. at 1-2.

⁹ Compl. at 2; see 11 C.F.R. § 104.14(d).

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1 recordkeeping tasks, failed to enter all of AFC's disbursements into its disclosure database, and
2 did not reconcile AFC's disbursements with its bank statements.¹⁰ AFC claims that because it
3 was dissatisfied with Crummitt's performance, it hired a new firm, Next Level Partners, after the
4 2016 election.¹¹ However, according to AFC, because Crummitt did not provide access to the
5 disclosure database software it had used to keep track of AFC's financial information, Next
6 Level was forced to recreate the database, and during that process, some additional
7 disbursements were omitted from the 2016 30-Day Post-General Election Report.¹²

8 After conducting an internal audit, AFC amended its 2016 12-Day Pre-General Election
9 Report on March 17, 2017, to disclose additional disbursements of \$95,094.32, and amended its
10 2016 30-Day Post-General Election Report on March 22, 2017, to disclose additional
11 disbursements of \$278,435.82.¹³ Based on AFC's amended reports disclosing \$373,530.14 in
12 increased activity, RAD referred AFC to OGC for further review.¹⁴

13 III. FACTUAL AND LEGAL ANALYSIS

14 The Federal Election Campaign Act of 1971, as amended ("Act"), requires political
15 committee treasurers to file reports of receipts and disbursements in accordance with the
16 provisions of 52 U.S.C. § 30104.¹⁵ These reports must include the amount and nature of these
17 receipts and disbursements.¹⁶ Here, AFC did not comply with the Act's reporting requirements

¹⁰ Resp. to MUR 7223 at 1-2 (Apr. 13, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; see AFC Amended 2016 12-Day Pre-General Election Rpt. at 2 (Mar. 17, 2017); AFC Amended 2016 30-Day Post-General Election Rpt. at 2, 5 (Mar. 22, 2017).

¹⁴ See Referral.

¹⁵ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁶ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

1 when it failed to disclose disbursements of \$95,094.32 on its 2016 12-Day Pre-General Election
2 Report and disbursements of \$278,435.82 on its 2016 30-Day Post-General Election Report —
3 an aggregate total of \$373,530.14 in increased activity.

4 AFC acknowledges its reporting errors but argues for leniency because of Crummitt's
5 negligence, which AFC claims to have promptly remedied when it hired a new consultant, filed
6 amended disclosure reports, and "revised its internal procedures to require that its reports are
7 reconciled by both its compliance consultant and by [AFC] staff prior to filing."¹⁷ However, the
8 Act imposes responsibility on political committees and their treasurers to certify the accuracy of
9 the disclosure information they provide to the Commission and, ultimately, the public.¹⁸ AFC
10 cannot avoid that responsibility by pointing to its consultant's negligence, and it clearly failed to
11 fulfill its obligations here. As such, we recommend that the Commission find reason to believe
12 that AFC violated 52 U.S.C. § 30104(b).

13 Nevertheless, the available record does not reasonably support the conclusion that AFC's
14 treasurer, Applegate, knowingly or recklessly filed false disclosure reports. The Commission's
15 Treasurer Policy provides that a treasurer may, in some circumstances, be held personally liable
16 for violations of the Act or Commission regulations.¹⁹ In prior matters, the Commission has held
17 treasurers personally liable for knowingly and willfully violating the law in an effort to conceal

¹⁷ Resp. to MUR 7223 at 2-3.

¹⁸ See Factual and Legal Analysis at 5, MUR 6979 (Republican Majority Campaign) ("Ultimately, the Committee was responsible for ensuring timely and accurate filing of reports with the Commission, and [its treasurer] should have made sure the report he filed was accurate.").

¹⁹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005) ("[T]he Commission intends to consider a treasurer the subject of an enforcement proceeding in his or her personal capacity only when available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations.").

1 the deliberate misappropriation of committee funds.²⁰ The Commission has also held a treasurer
2 personally liable for recklessly failing to fulfill his or her duties as treasurer where the available
3 information indicated a systemic lack of diligence.²¹ In another case, however, the Commission
4 declined to hold a treasurer personally liable for relying on more experienced professionals to
5 prepare disclosure information on behalf of a political committee.²²

6 Here, the available information indicates that Applegate negligently certified erroneous
7 disclosure reports that had been prepared by a professional consultant, but it does not support a
8 reasonable inference that Applegate knowingly and willfully filed false disclosure reports or
9 recklessly failed to fulfill his duties as treasurer. We therefore recommend, under these specific
10 circumstances, that the Commission find no reason to believe that Applegate personally violated
11 the Act or Commission regulations.

²⁰ See, e.g., MUR 6867 (Robert Telthorst); MUR 6768 (Debra Doherty); MUR 6539 (Joe Green); MUR 6475 (Andrew McCrosson); MUR 6179 (Christopher Ward); MUR 5971 (Jennifer Adams). A violation is knowing and willful where the unlawful "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law." 122 Cong. Rec. 12197, 12199 (May 3, 1976); see also *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013).

²¹ See, e.g., Factual and Legal Analysis at 2–4, MUR 5652 (Susan Arceneaux) (finding treasurer, an employee of a professional compliance firm, personally liable for recklessly failing to fulfill her duties when the political committee she served violated the Act by accepting 65 corporate contributions totaling \$64,600, 541 excessive contributions totaling \$552,773, and \$100,000 from the proceeds of an unsecured bank loan; understating total receipts by \$693,576 and total disbursements by \$960,876; overstating cash on hand by \$281,800; failing to itemize contributions from individuals and political committees, as well as \$302,000 in joint fundraising proceeds; and failing to file 48-hour notices for 77 contributions totaling \$106,100).

²² See, e.g., Factual and Legal Analysis at 5, MUR 6889 (Michael Delk) (dismissing allegations against a treasurer in his personal capacity partly because the treasurer was "inexperienced" and "relied on the erroneous guidance of politically experienced, professional [political committee] staff").

1 **V. RECOMMENDATIONS**

- 2 1. Open a MUR in RAD Referral 17L-23;
- 3 2. Merge that new MUR with MUR 7223;
- 4 3. Find reason to believe that Applegate for Congress and Jennifer May in her
5 official capacity as treasurer violated 52 U.S.C. § 30104(b);
- 6 4. Find no reason to believe that Douglas L. Applegate personally violated the Act
7 or Commission regulations as alleged;
- 8 5. Approve the attached Factual and Legal Analysis;
- 9 6. Enter into conciliation with Applegate for Congress and Jennifer May in her
10 official capacity as treasurer prior to a finding of probable cause to believe;
- 11 7. Approve the attached conciliation agreement; and

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Applegate for Congress and Jennifer May MUR 7223 / RR 17L-23
4 in her official capacity as treasurer
5 Douglas L. Applegate
6

7 **I. GENERATION OF MATTER**

8 Matter under review (“MUR”) 7223 was generated by a complaint filed with the Federal
9 Election Commission (“Commission”) by James V. Lacy, *see* 52 U.S.C. § 30109(a)(1). Shortly
10 after the Complaint was filed, AFC amended its 2016 pre- and post-general election reports to
11 disclose an additional \$373,530 in disbursements. RAD Referral (“RR”) 17L-23 was generated
12 by information ascertained by the Commission in the normal course of carrying out its
13 supervisory responsibilities, *see* 52 U.S.C. § 30109(a)(2).¹

14 The Complaint alleges that Applegate for Congress and Jennifer May in her official
15 capacity as treasurer (“AFC”) and Douglas Applegate, a federal candidate and AFC’s original
16 treasurer, knowingly misreported disbursement and cash-on-hand figures in disclosure reports
17 filed with the Commission.² AFC and Applegate acknowledge filing erroneous disclosure
18 reports but assign responsibility for the errors to their hired consultant, and assert that they
19 remedied the problem by hiring a new consultant, filing amended disclosure reports, and
20 adopting stronger compliance policies. Based on the available record, the Commission has
21 determined to open a MUR in RAD Referral 17L-23, merge that matter with MUR 7223, and
22 find reason to believe that AFC violated 52 U.S.C. § 30104(b). However, because there is an
23 insufficient factual basis to infer that Applegate knowingly or recklessly filed false disclosure

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² Compl. at 1-2 (Mar. 13, 2017).

1 reports, the Commission finds no reason to believe that Applegate personally violated the law as
2 alleged.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 Douglas Applegate was a candidate for California's 49th Congressional District during
6 the 2016 election cycle. Applegate for Congress, his principal campaign committee, registered
7 with the Commission on July 20, 2015, and Applegate served as its treasurer until December 28,
8 2016, when Jennifer May was appointed treasurer.³ AFC filed its 2016 12-Day Pre-General
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2 and failed to respond to Commission RFAs seeking to correct the public record.⁸ The
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4 personal liability as AFC’s treasurer — because “Applegate cannot credibly claim that he was
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3 **B. Legal Analysis**

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